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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,736	01/25/2002	Lorenz Gabele	HOE-675	2795

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LAW OFFICE OF BARRY R LIPSITZ  
755 MAIN STREET  
MONROE, CT 06468

EXAMINER
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MOHANDESI, JILA M

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 05/21/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/057,736

Applicant(s)

GABELE, LORENZ

Examiner

Jila M Mohandesi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Odell (4,444,310). Odell '310 discloses a sterile container for accommodation and sterile storage, in particular of medical instruments or material, comprising areas formed by a container base (tray 11) and container walls, wherein the receiving area comprises a plurality of separate chambers (receptacles 12), wherein each chamber has its own cover (flexible cover 27) as closure element and wherein a seal (longitudinal strips 25) is seated between each chamber and its closure element. See Figure 4 embodiment and column 3, lines 43-48.

With respect to claim 5 and the material of the container, see column 5, lines 1-4.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stone et al. (5,732,821) in view of Bond et al. (6,051,186). Stone '821 discloses a

sterile container for accommodation and sterile storage, in particular of surgical instruments or material, comprising areas formed by a container base (200) and container walls, wherein the receiving area comprises a plurality of separate chambers (13, 18, 24), wherein each chamber has its own cover (cover 60 with slidable guide means, slot 54) as closure element. See Figure 1 embodiment and column 10, lines 53-55. Stone `821 is silent about a seal being seated between each chamber and its closure element. Bond `186 discloses a sterile container including a seal (flexible strip 9A, see Figure 8 embodiment) seated between a chamber and its closure element for providing greater sealing integrity. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a seal between each chamber of stone `821 and its closure element as taught by Bond `186 to provide for a better seal integrity.

With respect to claims 4 and 5, Bond `186 discloses making the sterile container from clear plastic. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the sterile container of Stone `821 from clear plastic as taught by Bond `186. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

With respect to claims 7 and 8, note the openings (filtered apertures 204) in container base in Figure 1 embodiment of Stone `821.

With respect to claim 2, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to make the

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closure element pivotable because Applicant has not disclosed that making the closure element pivotable provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either a slidable closure element taught by Stone `821 or the claimed pivotable closure element because both closure elements perform the same function of closing and sealing the chambers.

5. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stone et al. (5,732,821) in view of Baker (6,077,485). Stone `821 discloses a sterile container for accommodation and sterile storage, in particular of surgical instruments or material, comprising areas formed by a container base (200) and container walls, wherein the receiving area comprises a plurality of separate chambers (13, 18, 24), wherein each chamber has its own cover (cover 60 with slidable guide means, slot 54) as closure element. See Figure 1 embodiment and column 10, lines 53-55. Stone `821 is silent about a seal being seated between each chamber and its closure element and the specifics of the filter arrangement. Baker `485 discloses a sterile container including a seal (gasket 25, see Figure 2A embodiment) seated between a chamber and its closure element for providing greater sealing integrity. Baker `485 also discloses filter assembly (32) and (33) which include a holder (retainer plate 47), protective grating (cover plate 46), edge seal (48), lock stud (68), a circular paper filter, and appropriate mounting hardware. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a seal between each chamber of stone `821 and its closure as taught by Baker `485 to provide for a better seal integrity.

Also, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a holder and a protective grating for the filter of Stone '821 as taught by Baker '485 to better hold the filter and also protect the filter from being damaged by the instruments.

With respect to claims 4 and 5, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

With respect to claims 7 and 8, note the openings (filtered apertures 204) in container base in Figure 1 embodiment of Stone '821.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are containers analogous to applicant's invention. Telephone inquiries regarding the status of application or other general questions, by persons entitled to the information "should be directed to the group clerical personnel and not to the Examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148 or the Tech Center 3700 Customer Service Center number is (703) 306-5648. For applicant's convenience, the Group Technological Center FAX number is (703) 872-9302. (Note that the Examiner cannot confirm receipt of faxes) Please identify Examiner Mohandesi of Art Unit 3728 at the top of your cover sheet of any correspondence submitted. Inquiries only

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concerning the merits of the examination should be directed to Jila Mohandesi whose telephone number is (703) 305-7015. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (703) 308-2672.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g. copies of references cited, form PTO-1449, for PTO-892, etc. requests for copies of such papers should be directed to Donna Monroe at (703) 308-2209.

Check out our web-site at "www.uspto.gov" for fees and other useful information.

J. MOHANDESI  
PATENT EXAMINER

  
Jila M Mohandesi  
Examiner  
Art Unit 3728

JMM  
May 14, 2003